

Message Text

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C O N F I D E N T I A L STATE 187178

E.O. 11652: GDS

TAGS:MARR, AS

SUBJECT: SOLAR ELECTRO-OPTICAL NETWORK STATION, AUSTRALIA

REF: CANBERRA 3910

1. SUBJECT TO CHANGES DESCRIBED BELOW, THE REVISED GOA
DRAFT AGREEMENT AND CO-OPERATING AGENCY ARRANGEMENT FOR
SUBJECT STATION, ATTACHED TO DFA AIDE-MEMOIRE REFERRED TO
IN REFTTEL, ARE SATISFACTORY.
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2. FOLLOWING CHANGES SHOULD BE MADE TO DRAFT AGREEMENT FOR
REASONS INDICATED:

A. IN THE PENULTIMATE SENTENCE OF PARAGRAPH (2), THE WORDS
"CO-OPERATING AGENCY OF THE" SHOULD BE INSERTED BEFORE
"UNITED STATES GOVERNMENT." THIS CHANGE IS DESIRED FOR
REASONS OF ACCURACY AND CONSISTENCE WITH THE REFERENCE TO
THE GOA CO-OPERATING AGENCY IN THE SAME SENTENCE.
ADDITIONALLY, IN THE LAST SENTENCE THE TERM "MILITARY"
IS PREFERRED TO THE TERM "SERVICE" FOR REASONS OF CLARITY.

B. IN THE SECOND SENTENCE OF PARAGRAPH (4), THE WORD "EXCESS" SHOULD BE INSERTED BEFORE "SPARE PARTS." THIS CHANGE IS NECESSARY IN ORDER TO AVOID IMPLICATION THAT USG

IS OBLIGATED TO DISPOSE OF ALL OF ITS PROPERTY AT THE STATION UNDER THE 1973 AGREEMENT ON DISPOSAL OF EXCESS PROPERTY, WHETHER OR NOT SUCH PROPERTY HAS BEEN DETERMINED TO BE EXCESS IN ACCORDANCE WITH U.S. LAW. DETERMINATION THAT ANY PARTICULAR PROPERTY IS EXCESS CANNOT BE MADE IN ADVANCE OF TIME THAT U.S. HAS DECIDED TO WITHDRAW FROM OPERATION OF THE STATION.

C. IN SUBPARAGRAPH (5)(1), THE REFERENCE TO ARTICLES 6 AND 7 OF THE SOFA, AS BEING PROVISIONS OF THE SOFA WHICH SHALL NOT APPLY TO THIS AGREEMENT, SHOULD BE DELETED. ARTICLES 6 AND 7 OF THE SOFA PROVIDE IMPORTANT TAX EXEMPTIONS FOR MEMBERS OF THE U.S. FORCES, CIVILIAN COMPONENT AND DEPENDENTS, WHICH ARE NOT OTHERWISE PROVIDED IN THE DRAFT AGREEMENT. SUBPARAGRAPHS (A) AND (B) OF PARAGRAPH 16 OF GOA DRAFT PROVIDE ONLY FOR INCOME TAX EXEMPTIONS, AND OMIT EXEMPTIONS FROM OTHER TAXES, SUCH CONFIDENTIAL

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AS THOSE ON PERSONAL PROPERTY, PROVIDED IN ARTICLES 6 AND 7 OF THE SOFA. IN ANY EVENT, WE SEE NO NEED TO RENEGOTIATE CONTENT OF ARTICLES 6 AND 7 OF THE SOFA. THESE ARTICLES SHOULD APPLY TO THIS AGREEMENT, JUST AS THEY DO WITH RESPECT TO OTHER U.S. DEFENSE ACTIVITIES IN AUSTRALIA. IN ORDER TO AVOID UNNECESSARY DUPLICATION AND POSSIBLE INCONSISTENCY, SUBPARAGRAPHS (A) AND (B) OF PARAGRAPH 16 OF THE GOA DRAFT SHOULD ALSO BE DELETED.

D. IN SUBPARAGRAPH (5)(2)(A), THE WORDS "EXCEPT FOR THE PURPOSES OF AUSTRALIAN TAXATION LAWS," SHOULD BE DELETED. WE SEE NO REASON WHY UNITED STATES CIVILIAN EMPLOYEES SHOULD NOT RECEIVE TAX EXEMPTIONS PROVIDED BY THE SOFA. AS DEFINED IN SUBPARAGRAPH (5)(3) OF THE AGREEMENT, THE TERM UNITED STATES CIVILIAN EMPLOYEE INCLUDES ONLY EMPLOYEES OF THE UNITED STATES GOVERNMENT, I.E., IT DOES NOT INCLUDE UNITED STATES CONTRACTOR PERSONNEL. SINCE UNITED STATES CITIZEN EMPLOYEES OF THE UNITED STATES GOVERNMENT QUALIFY AS MEMBERS OF THE CIVILIAN COMPONENT UNDER THE SOFA THEY SHOULD BE ENTITLED TO THE TAX EXEMPTIONS PROVIDED THEREIN.

E. FOR CLARITY, IN SUBPARAGRAPH (5)(2)(B) THE WORD "GOVERNMENT" SHOULD BE INSERTED IN THE FIRST LINE AFTER THE WORD "EITHER."

F. FOR CLARITY, LINES 7 THROUGH 9 OF SUBPARAGRAPH (5)(2)(C) SHOULD BE AMENDED TO READ AS FOLLOWS: "UNITED STATES

GOVERNMENT OR OF THE AUSTRALIAN GOVERNMENT, AS THE CASE MAY BE, IN THE PERFORMANCE OF HIS OFFICIAL DUTIES, AND."

G. IN SUBPARAGRAPH (5)(3), THE WORDS "THIS PARAGRAPH" SHOULD BE SUBSTITUTED FOR THE WORDS "PARAGRAPH (5) SUBPARAGRAPH (2) AND OF PARAGRAPH (16) CLAUSE (B)," BECAUSE THE DEFINITION OF UNITED STATES CIVILIAN EMPLOYEE APPLIES WHEREVER IT APPEARS IN PARAGRAPH (5) OF THE CONFIDENTIAL

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AGREEMENT.

H. THE LAST LINE OF SUBPARAGRAPH (8)(1) SHOULD BE AMENDED TO READ AS FOLLOWS: "IS, OR IS INTENDED TO BE, THE PROPERTY OF THE UNITED STATES GOVERNMENT." THIS LANGUAGE IS CONSISTENT WITH OTHER US-AUSTRALIAN AGREEMENTS, SUCH AS THE 1969 JDSCS AGREEMENT, AND IS NECESSARY TO COVER PROPERTY DESTINED TO BE USG PROPERTY, TITLE TO WHICH HAS NOT YET PASSED TO THE UNITED STATES GOVERNMENT AT THE TIME OF ENTRY INTO AUSTRALIA.

I. IN SUBPARAGRAPH (11)(2), THE WORDS "OR IMPROVEMENTS" SHOULD BE SUBSTITUTED FOR "FACILITIES OR STRUCTURES" IN ORDER TO LIMIT MORE CLEARLY APPLICATION OF THIS SENTENCE

TO REAL PROPERTY. IN ORDER TO STATE MORE PRECISELY THE FINANCIAL OBLIGATIONS OF THE TWO GOVERNMENTS WITH RESPECT TO REAL PROPERTY, THE WORDS "AND WITHOUT COST TO THE AUSTRALIAN GOVERNMENT" SHOULD BE DELETED FROM THE END OF THIS SUBPARAGRAPH, AND THE FOLLOWING TWO SENTENCES INSERTED IN LIEU THEREOF: "THE AUSTRALIAN GOVERNMENT SHALL NOT BE OBLIGATED TO COMPENSATE THE UNITED STATES GOVERNMENT FOR THE RESIDUAL VALUE OF IMPROVEMENTS CONSTRUCTED AT THE LATTER'S EXPENSE. NEITHER SHALL THE UNITED STATES GOVERNMENT BE OBLIGATED TO RESTORE LANDS OR IMPROVEMENTS TO THEIR ORIGINAL CONDITION, NOR TO COMPENSATE THE AUSTRALIAN GOVERNMENT IN LIEU THEREOF."

J. THE FOLLOWING SENTENCE SHOULD BE INSERTED AT THE END OF PARAGRAPH (12): "THE UNITED STATES GOVERNMENT SHALL NOT BE LIABLE FOR THE PAYMENT OF RENT OR ANY SIMILAR CHARGE AS COMPENSATION FOR THE USE, OR AMORTIZATION OF CAPITAL INVESTMENT, OF ANY EXISTING ACCESS ROADS, BUILDINGS, CONFIDENTIAL

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INSTALLATIONS, UTILITIES OR OTHER FACILITIES OR STRUCTURES MADE AVAILABLE BY THE AUSTRALIAN GOVERNMENT FOR THE PURPOSES OF THIS AGREEMENT." THIS PROVISION IS NECESSARY TO MAKE IT CLEAR THAT UNITED STATES OBLIGATION UNDER PARAGRAPH (9) OF THE AGREEMENT TO BEAR COST OF ESTABLISHMENT

OF THE STATION EXTENDS ONLY TO NEW CONSTRUCTION AND OTHER IMPROVEMENTS, AND NOT TO ANY EXISTING IMPROVEMENTS WHICH THE GOA MAY MAKE AVAILABLE FOR THE STATION.

K. AS INDICATED IN PARAGRAPH 2.C. OF THIS MESSAGE, SUB-PARAGRAPHS (16)(A) AND (B) SHOULD BE DELETED. FOR

CONSISTENCY WITH THE CHANGES THAT FOLLOW, THE CHAPEAU OF PARAGRAPH (16) SHOULD BE DESIGNATED AS SUBPARAGRAPH (1). EXISTING SUBPARAGRAPHS (16)(C) AND (D) WOULD THEN BE REDESIGNATED AS SUBPARAGRAPHS (16)(1)(A) AND (B), RESPECTIVELY. THE FOLLOWING SUBPARAGRAPHS (16)(2) THROUGH (5) SHOULD BE INSERTED. THESE PROVISIONS ARE FROM THE ORIGINAL US DRAFT AND ARE BASED ON SIMILAR PROVISIONS OF OTHER US-AUSTRALIAN AGREEMENTS. TEXT FOLLOWS:

"(2) WHERE THE LEGAL INCIDENCE OF ANY FORM OF TAXATION IN AUSTRALIA DEPENDS UPON RESIDENCE OR DOMICILE, PERIODS DURING WHICH SUCH CONTRACTORS, SUBCONTRACTORS, PERSONNEL AND DEPENDANTS ARE IN AUSTRALIA SOLELY IN CONNECTION WITH THE ESTABLISHMENT, MAINTENANCE OR OPERATION OF THE OBSERVATORY SHALL NOT BE CONSIDERED AS PERIODS OF RESIDENCE THEREIN, OR AS CREATING A CHANGE OF RESIDENCE OR DOMICILE, FOR THE PURPOSES OF SUCH TAXATION.

(3) PERSONAL PROPERTY WHICH IS SITUATED IN AUSTRALIA SOLELY BY REASON OF SUCH CONTRACTORS, SUBCONTRACTORS, PERSONNEL AND DEPENDANTS BEING IN AUSTRALIA, OR CARRYING ON BUSINESS IN AUSTRALIA, WHOLLY AND EXCLUSIVELY IN

CONNECTION WITH THE PERFORMANCE IN AUSTRALIA OF A CONTRACT
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OR CONTRACTS WITH THE UNITED STATES GOVERNMENT IN CONNECTION WITH THE OBSERVATORY SHALL, IN RESPECT OF THE HOLDING BY, TRANSFER BY REASON OF THE DEATH OF, OR TRANSFER TO OR BY THOSE PERSONS OR COMPANIES, BE EXEMPT FROM TAXATION UNDER THE RELEVANT LAWS OF THE COMMONWEALTH OF AUSTRALIA.

(4) THE LAST PRECEDING SUBPARAGRAPH SHALL APPLY TO ESTATE AND GIFT DUTIES ONLY IF THE PROPERTY CONCERNED IS SUBJECT, AND IS BROUGHT, TO TAXATION UNDER THE LAWS OF THE UNITED STATES RELATING TO ESTATE OR GIFT TAX, AND SHALL NOT APPLY IN RELATION TO:

(A) PROPERTY HELD AS, OR FOR THE PURPOSE OF, AN INVESTMENT;

(B) INTANGIBLE PROPERTY REGISTERED, AND COPYRIGHT SUBSIST- IN AUSTRALIA; OR

(C) PROPERTY HELD IN CONNECTION WITH THE CARRYING ON IN AUSTRALIA OF ANY BUSINESS NOT OTHERWISE REFERRED TO IN

THIS PARAGRAPH.

(5) A PERSON OR COMPANY SHALL NOT BE DISQUALIFIED FROM BEING A CONTRACTOR, SUBCONTRACTOR OR ONE OF THEIR PERSONNEL IN RESPECT OF WHOM THIS PARAGRAPH APPLIES BY REASON ONLY OF THE CONTRACTOR OR SUBCONTRACTOR HAVING UNDERTAKEN THE

PERFORMANCE IN AUSTRALIA OF A CONTRACT FOR THE UNITED STATES IN CONNECTION WITH A PROJECT, OTHER THAN THE OBSERVATORY, AGREED UPON BY THE TWO GOVERNMENTS."

L. IN SUBPARAGRAPH (17)(1), THE WORDS "AND WHO LIVE AT THE TOWNSHIP OF EXMOUTH" SHOULD BE DELETED. WE ARE CONCERNED THAT SOME STATION PERSONNEL MAY RESIDE IN AREAS CONFIDENTIAL

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OUTSIDE THE LIMITS OF THE TOWNSHIP OF EXMOUTH. WE SEE NO REASON WHY ANYONE SHOULD BE EXCLUDED FROM THE NORTH-WEST CAPE COMMISSARY ON THOSE GROUNDS. ALONG THE LINES OF OUR PREVIOUS COMMENTS IN PARAGRAPH 2.D. OF THIS MESSAGE, WE SEE NO REASON WHY ANY UNITED STATES CIVILIAN EMPLOYEE, AS DEFINED IN SUBPARAGRAPH (5)(3) OF THE AGREEMENT, SHOULD BE EXCLUDED FROM THE CIVILIAN COMPONENT. ACCORDINGLY, SUBPARAGRAPH (17)(2) SHOULD BE AMENDED TO RE AS FOLLOWS: "FOR THE PURPOSES OF THIS PARAGRAPH, THE TERMS 'MEMBERS OF THE UNITED STATES,' 'MEMBERS OF THE CIVILIAN COMPONENT' AND 'DEPENDANTS' SHALL BE AS DEFINED IN ARTICLE 1 OF THE STATUS OF FORCES AGREEMENT AND CLARIFIED IN SUBPARAGRAPHS (5)(2)(A) AND (5)(3) OF THIS AGREEMENT."

3. FOLLOWING CHANGES SHOULD BE MADE TO DRAFT CO-OPERATING AGENCY ARRANGEMENT:

A. NOTE TYPOGRAPHICAL ERROR NEAR END OF SUBPARAGRAPH 1(A), I.E., "SOLAR OBSERVATORY TO THE ESTABLISHED" SHOULD BE "SOLAR OBSERVATORY TO BE ESTABLISHED."

B. SUBPARAGRAPH 2(A)(I) SHOULD BE AMENDED TO READ AS FOLLOWS: "(I) CONSTRUCTION OF NECESSARY STRUCTURES, SUPPORT INSTALLATIONS, AND ACCESS AND SITE ROADS, TO THE EXTENT SUCH ARE NOT ALREADY AVAILABLE; PROVISION OF EQUIPMENT AND, SUBJECT TO SUBPARAGRAPH (B)(IV) OF THIS PARAGRAPH, RESPONSIBILITY FOR THE INSTALLATION AND CHECKOUT THEREOF; PROVISION OF PROCEDURES, DOCUMENTATION AND MAINTENANCE STANDARDS;". ONCE AGAIN, THESE CHANGES ARE DESIGNED TO REMOVE ANY IMPLICATION THAT USG IS OBLIGATED TO PAY RENT OR OTHERWISE REIMBURSE GOA FOR CAPITAL INVESTMENT IN ANY EXISTING STRUCTURE, ETC., THAT MAY BE MADE AVAILABLE FOR THE STATION.

C. TO LIMIT TRAINING COSTS, THE USAF INTENDS TO LIMIT SPECIALIZED TRAINING TO THE INITIAL CONTINGENT OF

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AUSTRALIAN PERSONNEL AND USE ON-THE-JOB TRAINING FOR FOLLOW-ON PERSONNEL. THUS SUBPARAGRAPH 2(A)(III) SHOULD BE CHANGED TO READ AS FOLLOWS: "(III) PROVISIONS OF SPECIALIZED TRAINING FOR INITIAL CONTINGENT OF AUSTRALIAN-EMPLOYED PERSONNEL AS ARRANGED WITH DOS."

D. IN ORDER TO AVOID IMPLICATION THAT USAF WILL PROVIDE ALL NECESSARY PERSONNEL, SUBPARAGRAPH 2(A)(V) SHOULD BE CHANGED TO READ AS FOLLOWS: "(V) PROVISION OF NECESSARY PERSONNEL TO EXTENT NOT PROVIDED BY DOS;". USAF HOPES TO KEEP U.S. MANNING TO MINIMUM.

E. IN PROVIDING OPERATING REQUIREMENTS THE USAF WILL BY NECESSITY PROVIDE INFORMATION ON FUTURE SCHEDULES AND WORKLOADS. RECOMMEND THAT SUBPARAGRAPH 2(A)(VI) READ AS FOLLOWS: "PROVISION OF OPERATING REQUIREMENTS, AND".

F. IN SUBPARAGRAPH 2(B)(I), DELETE THE WORDS "TO THE EXTENT PRACTICABLE, MANAGEMENT;". THE WORDS "TO THE EXTENT PRACTICABLE" ARE INAPPROPRIATE AND UNNECESSARY IN VIEW OF THE PHRASE "IN ACCORDANCE WITH PLANS ARRANGED WITH USAF," WHICH ADEQUATELY LIMITS THE SCOPE OF DOS RESPONSIBILITIES UNDER THIS SUBPARAGRAPH. THE REFERENCE TO "MANAGEMENT" AS A DOS RESPONSIBILITY IMPLIES SOLE DOS RESPONSIBILITY FOR MANAGEMENT, CONTRARY TO THE PRINCIPLE OF JOINT MANAGEMENT ESTABLISHED BY THE AGREEMENT.

G. FOR REASONS OF COMPLETENESS AND CLARITY, THE FOLLOWING NEW SUBPARAGRAPHS 2(B) (IX) AND (X) SHOULD BE INSERTED INTO THE DRAFT ARRANGEMENT:

"(IX) ARRANGE WITH LOCAL LAW ENFORCEMENT OFFICIALS FOR SURVEILLANCE OF OBSERVATORY AS APPROPRIATE; AND
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"(X) PROVIDE SPECIALIZED TRAINING FOR AUSTRALIAN REPLACEMENT PERSONNEL USING TRAINING MATERIALS PROVIDED BY THE USAF."

4. WE ASSUME THAT THE MOST DIFFICULT CHANGES FOR THE GOA TO ACCEPT WILL BE THOSE RELATED TO TAXATION AND DESCRIBED IN PARAGRAPHS 2.C, D, K AND L OF THIS MESSAGE. IF AN IMPASSE IS REACHED ON THESE ISSUES, EMBASSY MAY PROPOSE A PACKAGE DEAL GIVING US THE CHANGES DESCRIBED IN PARAGRAPHS 2.C, D AND L ABOVE IN EXCHANGE FOR THE COMPLETE DELETION OF PARAGRAPH 16 OF THE AGREEMENT IN LIEU OF THE CHANGES DESCRIBED IN PARAGRAPH 2.K ABOVE. THIS WOULD ASSURE PRESERVATION OF SOFA RIGHTS FOR U.S. MILITARY

PERSONNEL AND USG CIVILIAN EMPLOYEES, WHICH IS MORE
IMPORTANT THEN SECURING SPECIFIC TAX PROVISIONS FOR
CONTRACTOR PERSONNEL.
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